

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13567 of 2023

Applicant :- Sushma Devi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rakesh Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Rakesh Dubey, learned counsel for the applicant, Sri Vipin Kumar, learned counsel for the informant as well as Sri Deepak Kumar Singh, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.278 of 2023, under Sections 452, 304, 504, 506 I.P.C., Police Station Phulpur, District Prayagraj, during the pendency of trial.

PROSECUTION STORY:

4. As per prosecution story, the applicant and other co-accused persons Shiv Pratap Kesari and Himanshu are stated to have barged into the house of the informant on 30.7.2023 and are stated to have assaulted his father causing grievous injuries to him and had run away hurling abuses at him.

RIVAL CONTENTION:

(Argument on behalf of applicant)

5. Learned counsel for the applicant has submitted that she has been falsely implicated in the present case. The FIR is delayed by about more than one day and there is no explanation of the said delay caused. Learned counsel has further stated that the husband of the applicant was prosecuted under Sections 151, 107, 116 Cr.P.C. on 31.7.2023 itself and there was no whisper of a single word against the applicant in it. Had the applicant committed the said offence, her name would have come up in the said Challani report. The husband of the applicant has furnished his bail bonds in the said Challani report dated 31.7.2023. There is no criminal antecedent of the applicant.
6. Learned counsel for the applicant has further stated that as

per the injury report the injuries sustained by the injured are three in number while in autopsy report they are six in number, as such the said inconsistency tantamounts to interpolation and forgery. The cause of death is found to be septicemic shock due to antemortem injury noted (infection both lungs), as such the applicant cannot be attributed to be the author of cause of death of the deceased person. Learned counsel has further stated that statement of the deceased person was recorded by the Investigating Officer under Section 161 Cr.P.C., whereby he has stated that he was admitted from 31.7.2023 to 7.8.2023 and had come to home after that, but his condition continued to deteriorate, as such he was again called for check-up on 14.8.2023. Learned counsel has further stated that the said statement of the injured/deceased person indicates general allegations against all the accused persons.

(Argument on behalf of opposite party)

7. Per contra, learned counsel for the informant and learned AGA have vehemently opposed the anticipatory bail application on the ground that the statement of the injured/deceased person recorded under Section 161 Cr.P.C. tantamounts to dying-declaration, whereby the applicant has been nominated in it, although they have conceded it fairly that there are general allegations against all the three accused persons.

CONCLUSION:

8. The cause of death, as observed by the doctor conducting autopsy of the deceased person, has been found to be septicemic shock which is fall out of the said incident and the septicemia is the result of the injuries sustained, as such they cannot be stated to have been caused by anything else.

9. After hearing learned counsel for the parties as well as learned A.G.A. and taking into consideration the fact that the deceased has expired due to septicemic shock as a result of injuries sustained coupled with the fact that applicant has a criminal history of one case, i.e. Case Crime No.344 of 2013, under Section 409 I.P.C., Police Station- Phulpur and also that the arguments tendered at Bar pertain to regular bail which cannot be agitated under the provisions of Section 438 Cr.P.C., I do not find it a fit case for grant of anticipatory bail to the applicant.

10. The present anticipatory bail application is hereby found devoid of merits and is accordingly ***rejected***.

11. It is clarified that the observations made herein are limited

to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 8.12.2023

Vikas

[Krishan Pahal, J.]